

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1724.01
COMPLAINT INVESTIGATOR:	Susan Miner
DATE OF COMPLAINT:	March 28, 2001
DATE OF REPORT:	May 25, 2001
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	September 17, 2001

COMPLAINT ISSUES:

Whether the Northwestern School Corporation and the Kokomo Area Special Education Cooperative violated:

- 511 IAC 7-10-3(d) and 511 IAC 7-25-4(b) with regard to the school's alleged failure to conduct an educational evaluation and convene a case conference committee (CCC) meeting within 40 instructional days from the date of written parental consent in January 2000 and within 60 instructional days from the date of written parental consent in October 2000.
- 511 IAC 7-23-1(p) with regard to the school's alleged failure to obtain parental consent prior to disclosing personally identifiable information (photograph) of the student.
- 511 IAC 7-29-1(l) and IC 20-8.1-5.1-12 with regard to the school's alleged failure to provide, subsequent to the suspension of a student, a written statement to the parent regarding the student's misconduct and action taken.
- 511 IAC 7-29-1 with regard to the school's alleged failure to permit the student to return to school after the expiration of the period of suspension and requiring a CCC meeting prior to re-entry.

The original deadline for this report was April 27, 2001. However, due to the need to review additional information, the deadline was extended to May 4, 2001.

FINDINGS OF FACT:

1. The student is 12 years old, in the sixth grade, and is eligible for special education and related services as a student with an emotional disability.
2. The parent initiated a referral for evaluation to special education due to concerns over behavior and reading, signing permission to evaluate on January 6, 2000. An evaluation was conducted and a report submitted on February 23, 2000. Attempts to schedule a CCC meeting to discuss the evaluation results were made on March 8 and 22, and April

12, 17, and 19, 2000. The CCC convened on April 25, 2000, and determined the student was not eligible for special education services. The 40 instructional day timeline expired on March 3, 2000.

3. The student's physician made a diagnosis of Asperger's Syndrome, as indicated in a letter dated September 18, 2000, which prompted the parent to again make a referral for evaluation to special education. The referral for evaluation indicates that the referral is to address questions related to the diagnosis of Asperger's Syndrome and classroom behaviors. The parent signed permission to evaluate on October 30, 2000. The evaluation report was completed on January 22, 2001, and concluded that, although the student "shows characteristics of Asperger's Syndrome . . . the Asperger's does not adversely affect her educational performance." The parent signed permission for occupational and physical therapy evaluations on November 21, 2000. These evaluations were completed on February 9 and February 21, 2001, respectively.
4. The sixty instructional day timeline for completing the evaluation and convening of the CCC, based on the permission to evaluate signed on October 30, 2000, expired on February 5, 2001.
5. At the request of the school principal, the classroom teacher, and the special education director, the parent signed permission for further evaluation of the student's escalating behaviors on March 9, 2001. The school considered this a request for an additional evaluation that allowed them another sixty instructional days to complete. A CCC meeting convened on March 30, 2001, and determined the student eligible for special education and related services as a student with an emotional disability. It was also determined the student would be placed on daily homebound instruction beginning April 9, 2001. The parent signed consent for implementation of the placement and services. The school was on spring break from April 2 through 6, 2001.
6. The student was suspended on March 14, 2001, and no written notice was given to the parent. Discipline notices dated November 28, 2000; February 14 and 20, 2001; and two notices dated March 23, 2001, report disruptive behavior on the part of the student. The second notice dated March 23, 2001 states, "[the student] is suspended until the case conference is held next week - up to 5 ½ days." This written notice of the suspension was not provided to the parent until the CCC meeting on March 30, 2001. Documentation indicates this student has been suspended for a total of 8 days this school year.
7. The classroom teacher took a photograph of the student to document a particular behavior and shared the photograph only with the student's parent and other staff working with the student.
8. The school corporation's policy regarding students' educational records states, in part, that parents are provided the opportunity to inspect and review records as well as request amendments if the record is inaccurate, misleading, or otherwise in violation of the student rights. Neither the parent nor the school provided any documentation that the parent has requested the photograph be removed from the student's educational record.

CONCLUSIONS:

1. Finding of Fact #2 reflects that the school exceeded the forty instructional day timeline on

the referral for evaluation signed by the parent on January 6, 2000. **Therefore, a violation of 511 IAC 7-10-3(d) is found.** Finding of Fact #3 indicates that the parent signed consent for an educational evaluation on October 30, 2000. Findings of Fact #4 and #5 reflect that the school did not convene the CCC meeting until almost two months after the sixty instructional days had elapsed. **Therefore, a violation of 511 IAC 7-25-4(d) is found.** The school requested parental consent, three weeks after the October 30 consent, to conduct physical and occupation therapy evaluations. Pursuant to 511 IAC 7-25-3(i) an initial evaluation, for which the parent gave consent and on which a determination of the student's eligibility for special education will be made, must be a comprehensive evaluation, encompassing a variety of assessments and information gathering procedures, related to all areas of the suspected disability, including as appropriate, information on the student's social and emotional status, general intelligence, academic performance, and motor abilities. Further, the eligibility criteria for autism spectrum disorder (encompassing Asperger's Syndrome) requires an evaluation of fine and gross motor skills and sensory processing abilities. Additional consent for the therapy evaluations should not have been required (nor does the date of consent for these evaluations extend the sixty instructional day timeline). The suspected disability was Asperger's Syndrome, and evaluative information on the student's motor and sensory processing skills is required by 511 IAC 7-26-2.

2. Findings of Fact #7 and #8 indicate that the classroom teacher took a photograph of the student to document the student's behavior and that the photograph was shared with only the parent and school staff working with the student. Such photographs are part of the student's educational record and subject to the requirements of the Family Educational Rights and Privacy Act (FERPA). In accordance with FERPA and the school's policy, the school did not disclose the photograph in question to any individual who would require specific parental consent for such disclosure. **Therefore, no violation of 511 IAC 7-23-1(p) is found.** Because FERPA and the school's written policy permit a parent to request the amendment of an educational record the parent believes to be inaccurate, misleading, or otherwise in violation of the student's rights, the parent's recourse on photographs maintained in the student's educational record is through 511 IAC 7-23-2.
3. IC 20-8.1-5.1-12(d) requires the school to send a written statement to the parent, following a student's suspension, describing the student's misconduct and the action taken by the school. Finding of Fact #6 reflects that the school failed to provide the requisite written statement subsequent to the March 14, 2001, suspension. At the time of the March 14 suspension, the school is deemed to have knowledge that the student was a student with a disability because the parent had requested an evaluation. **Therefore, violations of 511 IAC 7-29-1 and IC 20-8.1-5.1-12 are found with regard to the March 14 suspension.** The written statement regarding the March 23, 2001, suspension was not provided until the March 30, 2001, CCC meeting. Although the statute does not provide a timeline in which the written statement on suspension must be provided to the parent, by not providing the statement to the parent until the CCC, the parent was deprived of information necessary to prepare for the CCC meeting for which one of the stated purposes was to discuss the student's behavior.
4. Finding of Fact #6 indicates the student was suspended on March 23, 2001, and that the suspension would continue for no more than 5 ½ days until the CCC convened. Finding of Fact #5 demonstrates that the CCC convened on March 30, 2001, and determined the

Student would receive homebound services beginning April 9, 2001. School was not in session between March 31 and April 8, 2001. The student was not denied re-entry into school as services began on the first instructional day following the CCC meeting. The student's suspension did not exceed the 5 ½ days originally imposed. **Therefore, no violation of 511 IAC 7-29-1 is found.**

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Northwestern School Corporation and Kokomo Area Special Education Cooperative shall:

1. Reconvene the CCC and consider the student's need for compensatory services as a result of the two-month delay in convening the CCC to determine the student's eligibility for special education services. Extended school year services shall be considered as a means of providing compensatory services. A copy of the CCC Report/IEP shall be submitted to the Division no later than May 25, 2001.
2. Review and, if necessary, revise policies and procedures regarding the provision of a comprehensive evaluation of a student who is referred for an initial educational evaluation. The policies and procedures must address:
 - a. Reviewing existing data, determining the need for additional data, and identifying the evaluation process to be utilized, including proposed assessment techniques and what the tests or evaluations will measure. (See 511 IAC 7-25-3(c), (e), and (i) and 511 IAC 7-25-4(a), (d), (f), and (h)).
 - b. Ensuring that a comprehensive evaluation is conducted in all areas related to the student's suspected disability within sixty instructional days from the date of written parental consent.
 - c. Ensuring that an evaluation is not bifurcated and no unwarranted parental consents are required.

A copy of the local policies, including any revisions, shall be submitted to the Division no later than September 14, 2001.

3. Conduct inservice training on the following to all staff who participate in the evaluation process:
 - a. Reviewing existing data, determining the need for additional data, and identifying the evaluation process to be utilized, including proposed assessment techniques and what the tests or evaluations will measure.
 - b. Data collection in order to ensure that a comprehensive evaluation is conducted in all areas related to the student's suspected disability within the sixty instructional day timeline.

Documentation of this inservice training, including the agenda, handouts, overheads or slide presentation, and sign-in sheets for attendees that include name, title, and school building must be submitted to the Division by September 14, 2001.

4. Send a written reminder to all building principals regarding the requirements of IC 20-8.1-

5.1-12, noting specifically the requirement that a written statement be sent to the parent following a student's suspension. A copy of the written reminder, along with a list of recipients, shall be submitted to the Division no later than September 14, 2001.

DATE REPORT COMPLETED: May 4, 2001